

# Setting the Standard

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An Analysis of the Impact of the 2005 Legislative  
Reforms on the Texas Workers' Compensation System,  
2010 Results



**Texas Department of Insurance**  
**December 2010**

## Executive Summary

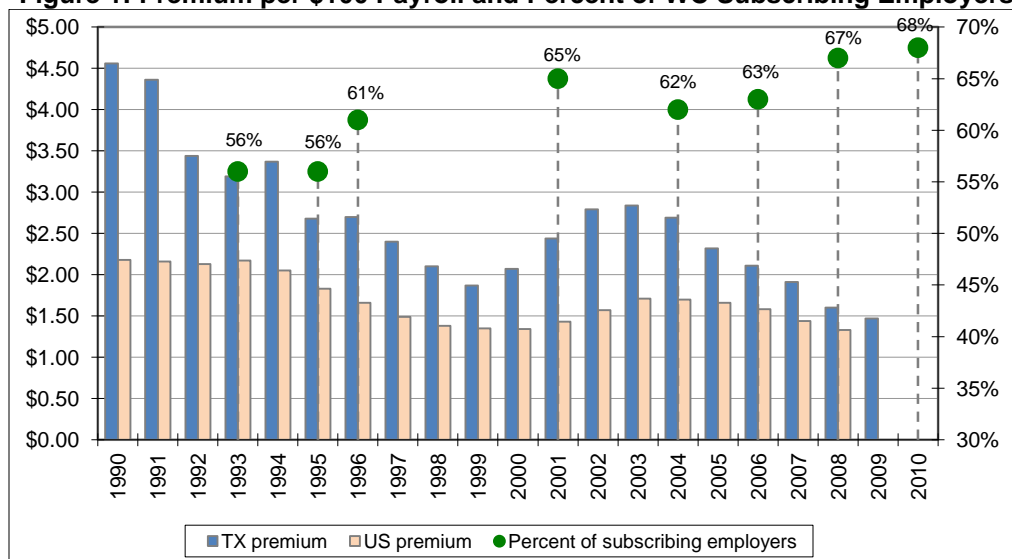
Section 2053.012, Texas Insurance Code and Section 405.0025, Texas Labor Code require the Texas Department of Insurance (Department) to issue biennial reports to the Texas Legislature no later than December 1<sup>st</sup> every even-numbered year on the impact of the 2005 House Bill (HB) 7 reforms on the affordability and availability of workers' compensation insurance for Texas employers and the impact of certified workers' compensation health care networks on return-to-work outcomes, medical costs, quality of care issues and medical dispute resolution.

The following are key findings from this analysis of the 2005 HB 7 reforms:

### Key System Indicators

Premium per \$100 payroll, which is the employers' cost of subscribing to the Texas workers' compensation system, has decreased by almost 50 percent from the previous peak in 2003 (see Figure 1). However, Texas premium remains higher than the U.S. average. Along with the decrease in premium rate, a higher percentage of Texas private employers are subscribing to the workers' compensation system. The 68% subscription rate in 2010 is the highest level of participation since the rate was first estimated in 1993.

**Figure 1: Premium per \$100 Payroll and Percent of WC Subscribing Employers**

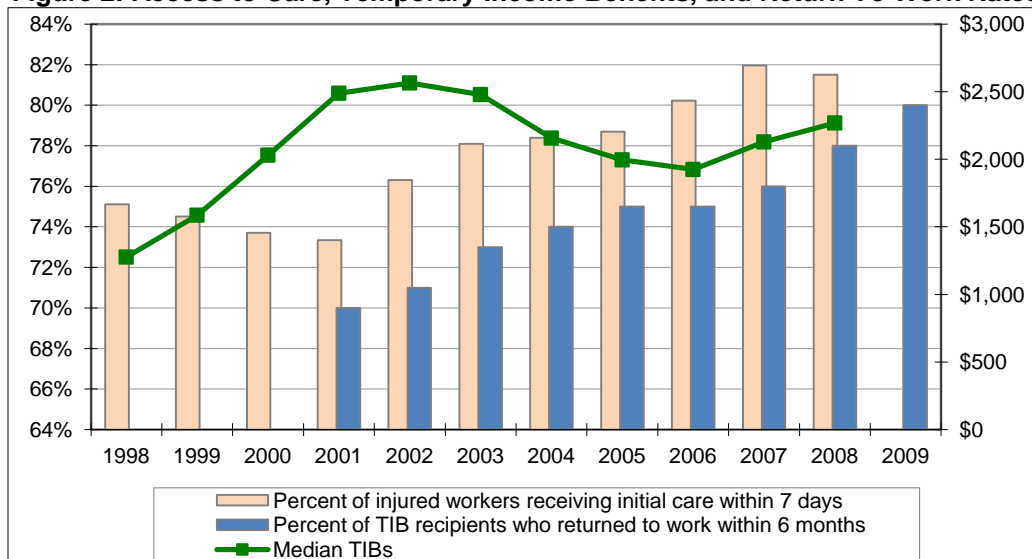


Sources: US data by calendar year, from NASI "Workers' Compensation: Benefits, Coverage, and Costs", 2010 edition. Texas data by policy year, from TDI and NCCI. Subscription data from TDI's Survey of Employers, 2010.

Access to medical care has also improved substantially since 2001. About 82 percent of injured workers in 2008 received initial care within 7 days after the injury, compared to 73 percent in 2001 (see Figure 2). Temporary income benefits (TIBs) for injured workers increased until 2002, decreased by 25 percent by 2006, but since then, has been on an increasing trend. Return-to-work

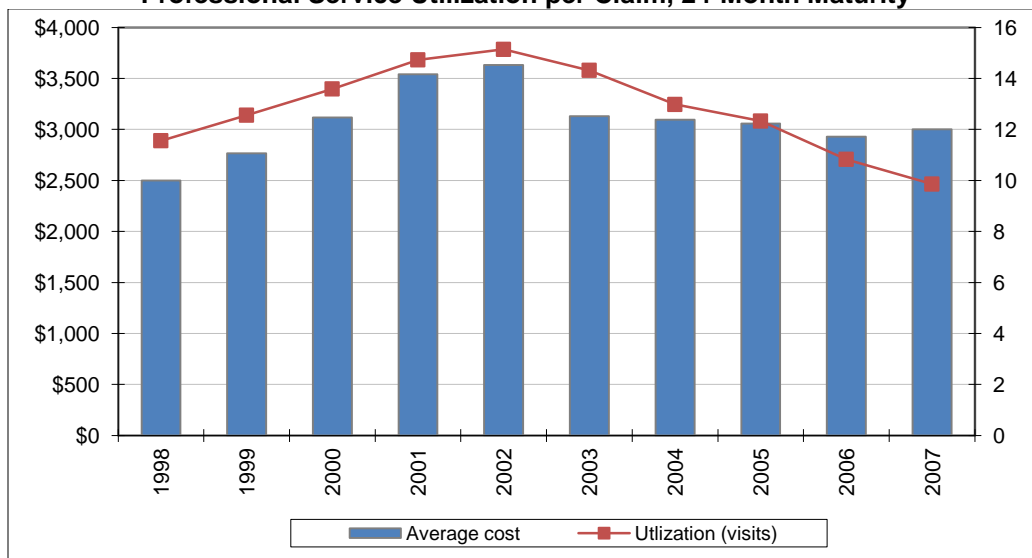
outcomes are improving steadily from 2001. In 2009, 80 percent of TIBs recipients returned to work within 6 months after their injury, up from 70 percent in 2001.

**Figure 2: Access to Care, Temporary Income Benefits, and Return To Work Rates**



Average professional medical cost per claim has been declining since its peak in 2002, but the overall medical cost per claim is in a stable or increasing trend due to an increase in hospital cost since 2003 (see Figure 3). The decrease in professional medical cost is largely due to the decrease in utilization (average number of visits to doctors).

**Figure 3: Average Medical Cost (Professional and Hospital) and Professional Service Utilization per Claim, 24-Month Maturity**



## **Rates and Premiums in the Insurance Market**

- Insurance companies workers' compensation insurance business has been profitable each year from 2003 to 2009 as measured by the industries combined ratios and return on net worth.
- As of November 2010, workers' compensation insurance rates have decreased approximately 40 percent since 2003.
- Average premiums have also come down from a high of \$2.85 per \$100 of payroll in 2003 to \$1.47 per \$100 of payroll in 2009. This is a reduction of nearly 50 percent.
- While rates and premiums have declined over time, additional reductions may be necessary for many insurance companies. The average indication from rate filings requested from insurance companies for the 2010 biennial rate hearing is -7.3 percent. This suggests that the average premium levels for the industry can be further reduced by approximately 7.3 percent.
- Undeveloped loss ratios compiled for the insurance companies show that the loss ratios are lower for claims in a network than for claims outside a network. Furthermore, the loss ratios suggest that the credits for certified healthcare networks, which range up to 20 percent, appear reasonable.

## **WC Health Care Networks**

- The number of employers participating in networks and workers being treated by networks has significantly increased; however, a relatively small percentage of workers' compensation claims are in network.
- Since the Department began accepting applications for workers' compensation health care networks on January 2, 2006, the agency has certified 30 networks covering 249 counties.
- Data calls conducted with 12 of the largest insurance company groups (representing 83 percent of 2009 direct workers' compensation premiums written in Texas) indicate that most large insurance companies have contracted with or established a certified workers' compensation network.
- 39,643 policyholders in 2010 (compared to 34,040 in 2008) have agreed to participate in workers' compensation networks in exchange for premium credits up to 20 percent. However, insurance carriers predict slower growth in the number of policyholders participating in networks over the next biennium.
- The vast majority of policyholders (84 percent) participating in networks are small to mid-sized employers with an annual premium of less than \$25,000.
- Results from data calls with workers' compensation networks indicate that as of February 2010, 142,214 injured workers have been treated in 27 networks (an increase from 40,000 in 18 networks in 2008). However, network claims only represent an estimated 21 percent of all new injuries and new lost-time claims.
- The vast majority of policyholders participating in networks (84 percent) and injuries being treated by networks (47 percent) are associated with one certified network (Texas Star) and one workers' compensation carrier in Texas (Texas Mutual Insurance Company).

## **Access to Care, Satisfaction with Care and Health-Related Outcomes in Health Care Networks**

- The results of recent injured worker surveys conducted by the Department show that a higher percentage (57 percent) of workers surveyed in 2010 reported “no problem” in getting the medical care they felt they needed for their work-related injury, compared with 52 percent of injured workers surveyed in 2005. But this rate is lower than the 60 percent reported in 2008.
- Injured workers who received medical care from workers’ compensation networks generally had poorer perceptions regarding their access to care and satisfaction with care than non-network workers. These poorer perceptions about access to and satisfaction with care may be related to non-network injured workers’ higher satisfaction with the option to choose their own treating doctor.
- Despite poorer perceptions about access to care for network claims, four networks are able to get an injured worker in to see a non-emergency doctor sooner than non-network claims.
- Based on results from the standardized survey instrument known as the Short Form 12 (SF-12), the physical and mental functioning scores for injured workers in Texas improved measurably in 2010. Overall mental functioning results were equal to the general U.S. population.

## **Medical Costs and Utilization**

- Medical costs have stabilized over time, while preliminary data indicates that the impact of workers’ compensation networks on medical costs and utilization of care is mixed.
- Total medical payments in the system have continued to decline since 2003 due to a variety of factors, including fewer claims being filed, an increase in medical and claim denial rates by insurance carriers, and reductions in medical reimbursement amounts as well as the reductions in the amount of certain types of treatments for new claims.
- Since the adoption of the 2003 professional services fee guideline (which adopted the Medicare billing rules and payment policies), the percentage of injured workers receiving physical medicine modalities has decreased; however, the percentage of injured workers receiving evaluation and management services, other physical medicine services, MRIs, other diagnostic services, pathology and laboratory services and other professional services has increased. There has been little change in the percentage of injured workers receiving hospital services.
- Since 2003, there have been significant reductions in the utilization of physical medicine services, CT scans and other types of diagnostic testing billed per worker. However, the amount of nerve conduction studies, surgical services and other types of professional services provided per worker who received these services has increased.
- The adoption of ODG treatment guidelines has not changed treatment patterns noticeably. The decrease in service utilization was wide-ranging, not specific to certain procedures as it would be expected if the changes were due to treatment guidelines. Currently available data indicate only that health care providers are paying some attention to utilization levels

in extreme cases but general treatment pathways have not yet changed significantly since the adoption.

- Overall, networks had higher average medical costs than non-network, but while non-network's average costs increased 8 percent from the 2009 results, most networks experienced either cost reductions, or lower increases than non-network. Also, networks tend to have higher utilization of professional and pharmacy services than non-network.
- Medical cost differences between network and non-network claims appear to be driven primarily by higher hospital fees, higher pharmacy utilization and higher utilization of certain physical medicine services and diagnostic tests than non-network claims with similar types of injuries.

## **Access to Medical Care**

- Total number of physicians actively practicing in Texas is increasing while the number of WC participating physicians is stable. As a result, workers' compensation participation rate is decreasing among all physicians. But the total number of claims reported is decreasing to the degree that the average number of patients per participating physician is also decreasing. There were 22.1 patients per participating physician in 1999, which decreased to 16.5 patients per physician in 2008 (a 25 percent decrease).
- Primary care physician participation rate decreased from 63.7 percent in 1999 to 45.7 percent in 2008 even though 2003 medical fee schedule increased reimbursement rates for evaluation and management services. In absolute numbers, there were 5,807 and 5,018 doctors, respectively. Decreasing participation by primary care physicians is in part alleviated by increasing participation by emergency medicine specialists who submitted bills for medical services that were normally associated with primary care physicians.
- Overall WC physician retention rate is high and stable. About 80 percent of physicians who participated in workers' compensation also treated WC patients in the following year.
- 'Top 20%' WC physicians in terms of claim volume account for more than 80 percent of total WC MD/DO patients and costs, and have higher retention rates: 98 percent or more of these physicians continue to treat workers' compensation patients year after year. 'Top 20%' participation rate as a whole appears unaffected by changes in fee schedule and rules. Participation remained relatively stable even during 2002-2005 when a sizable number of physicians exited the market.
- Some non-metro areas and border regions have higher physician participation rates than in metro areas, but also a higher number of WC patients per physician. Any lack of physician access in these areas is primarily due to the low total number of physicians practicing in these areas rather than a low WC participation rate.
- Overall, initial access (timeliness of care) measures show that WC patients are getting non-emergency treatments faster in 2008 than in 1998: 81.5 percent of patients received initial care in 7 days or less in 2008, up from 75.1 percent in 1998.
- Compensability/extent of injury denials and/or initial disputes tend to be associated with delayed initial care: 66.2 percent of disputed cases received initial care in 7 days or less in 2007, up from 55.1 percent in 1998.

- Initial access for network patients is slightly better than non-network patients despite a perception that closed nature of networks may delay medical treatment.
- Denial and/or disputes tend to delay initial care. Despite delays, initial access to care has improved for denied and/or disputed claims. Approximately 66 percent of denied/disputed cases received initial care in 7 days or less in 2007, up from 55 percent in 1998.

## **Return-to-Work Outcomes**

- Return-to-work outcomes continue to improve, but data indicates that the impact of networks on return-to-work outcomes is mixed.
- The percentage of injured workers receiving Temporary Income Benefits (TIBs) (i.e., injured employees with more than seven days of lost time) who have initially returned to work within six months post-injury has increased steadily from 74 percent for workers injured in 2004 to 80 percent in 2009.
- The number of days lost from work due to work-related injuries has fallen from an average of 97 days (a median of 26 days) for workers injured in 2004 to 57 days (a median of 21 days) in 2008.
- Improvements in return-to-work rates have also resulted in lower TIBs costs for Texas employers. The median number of weeks of TIBs paid to injured workers declined from a median of 8.6 weeks in 2002 to 6.0 weeks in 2008. While workers' wages continue to increase annually, this reduction in TIBs duration has resulted in a 12 percent decline in the median TIBs payment per claim in the same period.
- A higher percentage of injured workers surveyed in 2010 reported that they were released to go back to work by their doctor with no or little physical restrictions, compared with workers surveyed in 2005 and 2008. This may be the result of certain HB 7 provisions, including the adoption of return-to-work guidelines and the ability of designated doctors (i.e., independent doctors assigned by the Division) to review an injured worker's ability to return to work.
- Initial results from the Department's 2010 Workers' Compensation Network Report Card indicate that while there is little difference in the percentage of injured workers who return to work, networks had more favorable return-to-work results than Non-network for injured workers released to work by their treating doctors.

## **Medical Dispute Resolution and Complaint**

- Medical disputes and dispute durations have declined since 2005 and a relatively low number of complaints have been filed about workers' compensation health care networks.
- The percentage of medical disputes over preauthorization denials increased after 2005 but has stabilized in recent years, while the percentage of medical disputes over retrospective medical necessity issues decreased. This is likely due to the new requirement that medical services that fall outside of the Division's treatment guidelines be preauthorized by the insurance carrier.

- The total number of medical disputes filed with the Department decreased from 13,257 disputes in 2005 to approximately 12,200 in 2009. But more than 6,000 of the disputes in 2008 and 2009 were pharmacy disputes filed by one doctor, and they were either upheld or withdrawn during the appeal process.
- There have been significant improvements made in the number of days to resolve medical disputes since 2005. These reductions resulted from a variety of factors, including changes in HB 7 to more closely align the Independent Review Organization processes for workers' compensation and group health, fewer new disputes being filed and efforts from Division staff to more efficiently process new and legacy (pre-HB 7) medical fee disputes.
- Overall, the number of complaints has not changed significantly since the passage of HB 7 in 2005. For networks, the Department has received only 275 complaints since the certification of workers' compensation health care networks began in 2006. These complaints center on issues such as the availability of network health care providers, injured workers' concerns about the delivery of network notices, and providers' concerns about payment issues and their ability to participate in networks.

## **Employer Participation**

- Private-sector employer participation rates increased to 68 percent, the highest since the first employer participation survey was conducted in 1993. Among these subscribing employers, large employers with 500 or more employees also opted into the system at the highest rate (85 percent) in nine years.
- Increased employer participation rates, especially among large employers, have resulted in the second highest coverage rate (83 percent) for Texas employees since 1993.
- An estimated 32 percent of year-round Texas private-sector employers (approximately 106,137 employers) do not have workers' compensation coverage (i.e., are non-subscribers to the Texas workers' compensation system) - the lowest percentage since 1993.
- An estimated 17 percent of Texas employees (representing approximately 1.5 million employees) worked for non-subscribing employers – the second lowest percentage since 1993 - the rate was 16 percent in 2001.
- The most frequently cited reason (32 percent) by non-subscribing employers for not purchasing workers' compensation coverage was that premiums were too high.
- The most frequently cited reason (27 percent) by subscribing employers for participating in the Texas workers' compensation system was because the employer was able to participate in a health care network. This was also the primary reason given by 29 percent of large employers (with 500 or more employees) for participating in the Texas workers' compensation system.